

Fred W. Schwinn (SBN 225575)
CONSUMER LAW CENTER, INC.
12 South First Street, Suite 1014
San Jose, California 95113-2418
Telephone Number: (408) 294-6100
Facsimile Number: (408) 294-6190
Email Address: fred.schwinn@sjconsumerlaw.com

Attorney for Plaintiff
SAMUEL KWESI DADJO

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION**

SAMUEL KWESI DADJO,

Plaintiff,

v.

ENCORE RECEIVABLE MANAGEMENT,
INC., a Kansas Corporation,

Defendant.

Case No. C07-05856-SC

**JOINT CASE MANAGEMENT
STATEMENT AND FEDERAL RULE
OF CIVIL PROCEDURE 26(f)
DISCOVERY PLAN**

Date: Not Set
Time: Not Set
Judge: Honorable Samuel Conti
Courtroom: 1, 17th Floor
Place: 450 Golden Gate Avenue
San Francisco, California

The parties in the above-entitled action hereby submit this Joint Case Management Statement and Federal Rule of Civil Procedure 26(f) Discovery Plan for the initial case management conference. The parties jointly request that the Court enter a Case Management Order in this case without a Case Management Conference.

1. Jurisdiction and Service

The basis for the Court's subject matter jurisdiction is federal question jurisdiction. No parties remain to be served.

2. Statement of Facts

a. Plaintiff's Statement

This case is brought by an individual consumer to address Defendant's violations of the Fair

1 Debt Collection Practices Act, 15 U.S.C. § 1692 *et seq.* (hereinafter “FDCPA”) and of the Rosenthal
2 Fair Debt Collection Practices Act, California Civil Code §§ 1788-1788.33 (hereinafter
3 “RFDCPA”). The violations stem from Defendant’s communications attempting to collect a
4 consumer debt from Plaintiff.

5 Generally, Plaintiff is alleged to have owed a consumer debt which was sold, assigned or
6 otherwise transferred to Defendants. Thereafter, Defendants made several telephone calls to
7 Plaintiff which were each a communication in an attempt to collect a debt.

8 During the 20 day period from April 10 to 30, 2007, Defendant recorded thirteen (13)
9 messages on Plaintiff’s answering machine. The content of these messages is fully detailed in
10 Plaintiff’s Complaint. Plaintiff contends that Defendant failed to disclose Defendant’s identity and
11 the nature of Defendant’s business in its answering machine messages, in violation of 15 U.S.C. §
12 1692d(6) and Cal. Civil Code § 1788.11(b). See *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F.
13 Supp. 2d 1104, 1112, 1118 (C.D. Cal. 2005).

14 Plaintiff contends that Defendant failed to disclose that the answering machine messages
15 were communications from a debt collector, in violation of 15 U.S.C. § 1692e(11). See
16 *Hosseinzadeh v. M.R.S. Associates, Inc.*, 387 F. Supp. 2d 1104, 1116 (C.D. Cal. 2005); *Foti v. NCO*
17 *Financial Systems, Inc.*, 424 F. Supp. 2d 643, 669 (S.D.N.Y. 2006).

18 Plaintiff contends that Defendant caused Plaintiff’s telephone to ring repeatedly or
19 continuously with the intent to annoy, abuse or harass Plaintiff, in violation of 15 U.S.C. § 1692d(5)
20 and Cal. Civil Code § 1788.11(d).

21 Finally, Plaintiff contends that Defendant caused Plaintiff’s telephone to ring with such
22 frequency as to be unreasonable and constitute harassment to Plaintiff under the circumstances, in
23 violation of 15 U.S.C. § 1692d(5) and Cal. Civil Code § 1788.11(e).

24 **b. Defendant’s Statement**

25 Defendant contends it engaged in debt collection activities with respect to Plaintiff Dadjo,
26 and that all debt collection activities were compliant with all provisions of the Federal Fair Debt
27 Collection Practices Act (“FDCPA”) and the California Rosenthal Act (Civil Code § 1788 *et seq.*)
28 Defendant denies that the messages it left with Plaintiff violated the law. Defendant also denies that

1 it failed to disclose that the messages that it left with Plaintiff were “communications” under the law.
 2 Defendant also denies that it caused plaintiff’s phone to ring in such a manner to be annoying or
 3 harassing.

4 Defendant specifically contends that it did not violate 15 U.S.C. § 1692e(11) or 15 U.S.C.
 5 § 1692d(5) or Civil Code § 1788.11(d) or California Civil Code § 1788.11(e). Defendant also denies
 6 that Plaintiff is entitled to damages from Defendant in any regard, and specifically pursuant to 15
 7 U.S.C. § 1692k(a)(2)(A), California Civil Code § 1788.30(b), damages pursuant to California Civil
 8 Code § 1788.17, or costs and reasonable attorneys’ fees pursuant to 15 U.S.C. § 1692k(a)(3) and
 9 California Civil Code §§ 1788.30(c) and 1788.17.

10 **3. Legal Issues**

11 The principal legal issues which the parties dispute:

- 12 a. Whether Plaintiff is a “consumer” as that term is defined by 15 U.S.C. §
 13 1692a(3);
- 14 b. Whether Plaintiff is a “debtor” as that term is defined by Cal. Civil Code §
 15 1788.2(h);
- 16 c. Whether Defendant is a “debt collector” as that term is defined by 15 U.S.C.
 17 § 1692a(6);
- 18 d. Whether Defendant is a “debt collector” as that term is defined by Cal. Civil
 19 Code § 1788.2(c);
- 20 e. Whether the financial obligation allegedly owed by Plaintiff is a “debt” as
 21 that term is defined by 15 U.S.C. § 1692a(5);
- 22 f. Whether the financial obligation allegedly owed by Plaintiff is a “consumer
 23 debt” as that term is defined by Cal. Civil Code § 1788.2(f);
- 24 g. Whether Defendant caused Plaintiff’s telephone to ring repeatedly or
 25 continuously with the intent to annoy, abuse or harass Plaintiff, in violation
 26 of 15 U.S.C. § 1692d(5) and Cal. Civil Code §§ 1788.11(d) and 1788.17;
- 27 h. Whether Defendant caused Plaintiff’s telephone to ring with such frequency
 28 as to be unreasonable and constitute harassment to Plaintiff under the

1 circumstances, in violation of 15 U.S.C. § 1692d(5) and Cal. Civil Code §§
2 1788.11(e) and 1788.17;

3 i. Whether Defendant failed to disclose Defendant's identity and the nature of
4 Defendant's business, in violation of 15 U.S.C. § 1692d(6) and Cal. Civil
5 Code § 1788.11(b); and

6 j. Whether Defendant failed to disclose that the communications were from a
7 debt collector, in violation of 15 U.S.C. § 1692e(11) and Cal. Civil Code §
8 1788.17.

9 **4. Motions**

10 There are no motions pending at this time, however, the Parties will likely file motions for
11 summary judgment or partial summary judgment.

12 **5. Amendment of Pleadings**

13 At this time, Plaintiff does not anticipate amending the Complaint. Plaintiff reserves the
14 right to seek leave of the Court to file an amended Complaint should Plaintiff discover additional
15 facts or claims.

16 **6. Evidence Preservation**

17 Plaintiff will propose a protective order to govern production of confidential material in the
18 litigation.

19 Defendant has directed its relevant employees to preserve all documents, in paper or
20 electronic form, related to the subject matter of this case.

21 **7. Disclosures**

22 **a. Plaintiff's Statement**

23 Plaintiff served formal written disclosures on February 7, 2008, as required by Fed. R. Civ.
24 P. 26(a)(1).

25 **b. Defendant's Statement**

26 Defendant will serve its written disclosures on February 21, 2008.

27 **8. Discovery**

28 **Plaintiff's Discovery:** Plaintiff will serve Interrogatories and Requests for Production of

1 Documents shortly. At this time and without the benefit of Defendant's initial disclosures, Plaintiff
2 anticipates that he may require up to 10 depositions in this matter.

3 **Defendant's Discovery:**

4 Defendant will serve interrogatories and Request for Production of Documents. Defendant
5 will also require the deposition of Plaintiff. Defendant may require additional depositions depending
6 on the information revealed in discovery, the initial disclosures and in on-going communications
7 between the parties' counsel.

8 **9. Class Actions**

9 This case is not a class action. Plaintiff reserves the right to seek leave of the Court to file
10 an amended Complaint containing class allegations.

11 **10. Related Cases**

12 The parties are not aware of any related cases at this time.

13 **11. Relief**

14 **a. Plaintiff's Statement**

15 Plaintiff requests that this Court:

- 16 i. Declare that Defendant's answering machine messages violated the
17 Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692d(5), 1692d(6)
18 and 1692e(11);
- 19 ii. Declare that Defendant's answering machine messages violated the
20 Rosenthal Fair Debt Collection Practices Act, Cal. Civil Code §§
21 1788.11(b), 1788.11(d), 1788.11(e) and 1788.17;
- 22 iii. Award Plaintiff statutory damages in an amount not exceeding
23 \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A);
- 24 iv. Award Plaintiff a statutory penalty in an amount not less than \$100
25 nor greater than \$1,000 pursuant to Cal. Civil Code § 1788.30(b);
- 26 v. Award Plaintiff statutory damages in an amount not exceeding
27 \$1,000 pursuant to 15 U.S.C. § 1692k(a)(2)(A), as incorporated by
28 Cal. Civil Code § 1788.17;

vi. Award Plaintiff the costs of this action and reasonable attorneys fees pursuant to 15 U.S.C. § 1692k(a)(3) and Cal. Civil Code §§ 1788.17 and 1788.30(c); and

vii. Award Plaintiff such other and further relief as may be just and proper.

b. Defendant's Statement

Defendant requests that this Court determine the following:

i. That Defendant did not violate any provision of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et seq., and that Defendant did not violate any provision of the California Rosenthal Act, California Civil Code § 1788 et seq.

ii. That Defendant's answering machine messages did not violate any provision of the California Civil Code § 1788 et seq.

iii. That Defendant's answering machine messages did not violate any provision of the Fair Debt Collection Practices Act.

iv. For Judgment in favor of Defendant and against Plaintiff.

v. For a Judgment that Plaintiff is not entitled to any statutory penalties under the Fair Debt Collection Practices Act or the California Rosenthal Act, and declare that Plaintiff is not entitled to reasonable attorneys' fees or costs, under either the Fair Debt Collection Practices Act or the California Rosenthal Act.

vi. For Judgment that Defendant is entitled to its fees and costs incurred in the action.

12. Settlement and ADR

The parties have filed a Stipulation and Proposed Order selecting Mediation as the ADR process in this case.

13. Consent to Magistrate Judge for All Purposes

Plaintiff has consented to a Magistrate Judge for all purposes. Defendant declined consent

to a Magistrate Judge for all purposes.

14. Other References

None at this time.

15. Narrowing of Issues

The Parties anticipate that resolution of motions may narrow the issues for determination.

16. Expedited Schedule

The parties do not believe that an expedited schedule is necessary.

17. Scheduling

Initial Case Management Conference	Not Set
Close of Fact Discovery	October 31, 2008
Fed. R. Civ. P. 26(a)(3) Disclosures	November 14, 2008
Last Day to File Dispositive Motions	December 5, 2008
Final Pre-Trial Conference	February, 2009
Jury Trial	March, 2009

18. Trial

The parties anticipate that the action can be ready for trial in March 2009.

Estimated length of trial is 2-3 days.

19. Disclosure of Non-Party Interested Entities or Persons

a. Plaintiff's Statement

Pursuant to Civil L.R. 3-16, Plaintiff states, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent corporations) or other entities (i) have a financial interest in the subject matter in controversy or in a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that could be substantially affected by the outcome of this proceeding:

- i. Samuel Kwesi Dadjo, an individual residing in Hayward, California.

b. Defendant's Statement

Pursuant to Civil L.R. 3-16, Defendants state, on information and belief, that the following listed persons, associations of persons, firms, partnerships, corporations (including parent

1 corporations) or other entities (i) have a financial interest in the subject matter in controversy or in
2 a party to the proceeding, or (ii) have a non-financial interest in that subject matter or in a party that
3 could be substantially affected by the outcome of this proceeding:

4 i. Encore Receivable Management, Inc.

5 **20. Other Matters**

6 None at this time.

7
8 Dated: February 20, 2008

/s/ Fred W. Schwinn

Fred W. Schwinn, Esq.
Attorney for Plaintiff
SAMUEL KWESI DADJO

9
10
11 Dated: February 20, 2008

/s/ David J. Kaminski

David J. Kaminski, Esq.
Attorney for Defendant
ENCORE RECEIVABLE
MANAGEMENT, INC.